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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/597,969

Applicant(s)BERKVEN, WINFRIED
ANTONIUS HENRICUS**Examiner**

TREVILLIAN HIGHTER

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21 (2) of such treaty in the English language.

3. **Claims 1-4, 6, and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Legout et al. (EP 1 322 094 A1), hereinafter Legout. Legout is cited in the Information Disclosure Statement filed by the applicant on 8/15/2006.**
4. With respect to claim 1, Legout discloses a system for distributing a content (a content delivery network delivering content over the network, [0011], lines 13-15; Internet, with a

number of end users and surrogate servers, [0072], lines 1-4), the system comprising: a receiver for receiving the content ([0028], lines 26-30, receiver is interpreted as a client since a client can be an application or system that obtains results), the receiver comprising: a selector ([0004], lines 45-48, receiver is interpreted as a client) for selecting a distributor of the content out of a plurality of distributors ([0004], lines 45-48, 41-43); content-requesting means ([0004], lines 43-44, receiver is interpreted as a client) for requesting the content from the distributor selected ([0004], lines 43-44); receiving means for receiving the content ([0028], lines 26-30, a client receives content since it is an application or system that obtains results); identity-determining means for determining an identity associated with the content ([0068], lines 1-8; [0069], lines 9-26); and a verifier for verifying an availability of the content at the distributor based on the identity determined ([0027], lines 14-15; [0068], lines 1-8; [0069], lines 9-26), the distributor of the content (surrogate server adapted to deliver content requested by a user, [0011], lines 15-16) comprising: content request-receiving means for receiving a request for the content (device used by the user for connecting to the network, [0029], lines 38-46); and a dispatcher for dispatching the content (device used by the user for connecting to the network, [0029], lines 38-46); wherein the distributor is arranged to dispatch the content to the receiver (device used by the user for connecting to the network, [0029], lines 38-46); in response to receiving a request for the content from the receiver (content requested by user, [0011], line 16), and wherein the receiver is arranged to only select the distributor if the verifier verified the availability of the content at the distributor (checking whether the closest surrogate server has the ability to serve the content requested by the user, [0011], lines 24-35; [0017]; [0018]).

5. With respect to claim 2, Legout discloses wherein the receiver comprises identity-receiving means ([0068], lines 1-8); ([0028], lines 26-30); a process verifies if content is accessible from the closest server, and if the content is available, the process returns the chosen server identifier; server identifier represents a distributor; the receiver is interpreted as a client since a client is an application or system that obtains results, therefore, the receiver (i.e. client) may determine an identity by receiving an identity); and wherein the receiver is arranged to determine an identity by receiving the identity from one out of the plurality of distributors ([0068], lines 1-8); a process verifies if content is accessible from the closest server, and if the content is available, the process returns the chosen server identifier; server identifier represents a distributor. It is apparent that a plurality of servers is considered when determining the closest server. The receiver is interpreted as a client ([0028], lines 26-30) since a client is an application or system that obtains results, therefore, the receiver (i.e. client) may determine an identity by receiving an identity).

6. With respect to claim 3, Legout discloses wherein the receiver comprises identity-requesting means, and wherein the receiver is arranged to receive the identity after requesting the identity of the content from the distributor, wherein the distributor (103) (end user sends an HTTP request, [0078], lines 55-58; the end user receives a meta-file containing real content id and the optimal surrogate server for each meta-content id, [0079], lines 24-29), comprises: identity request-receiving means for receiving a request for the identity of the content (device used by the user for connecting to the network, [0029], lines 38-46; end user sends an HTTP request, [0078], lines 55-58; the end user receives a

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meta-file containing real content id and the optimal surrogate server for each meta-content id, [0079], lines 24-29); an identity dispatcher for dispatching the identity and herein the distributor is arranged to dispatch the identity to the receiver in response to receiving a request for the identity of the content from the receiver; (device used by the user for connecting to the network, [0029], lines 38-46; proxy server that returns to the user, a meta-file containing identities, [0079], lines 24-29).

7. With respect to claim 4, Legout discloses wherein the system comprises a further distributor (content delivery network having at least two surrogate servers, [0011], 13- 15), wherein the receiver is arranged to receive a further identity from the further distributor (end user sends an HTTP request, [0078], lines 55-58; the end user receives a meta-file containing real content id and the optimal surrogate server for each meta- content id, [0079], lines 24-29), wherein the verifier comprises a comparator for comparing the identity associated with the content with the further identity received, wherein the verifier is arranged to verify the availability of the content at the further distributor if the identity equals the further identity (comparing the identifier of the content requested by the user and the identifiers of the content contained in the closest surrogate server, [0017], lines 21-23, [0018]), and wherein the receiver is arranged to only select the further distributor if the verifier verified the availability of the content at the further distributor (checking whether the closest surrogate server has the ability to serve the content requested by the user, [0011], lines 24-35, [0017], [0018]).

8. With respect to claim 6, Legout discloses wherein the receiver comprises identity-deriving means, and wherein the receiver is arranged to derive the identity from content received from one out of the plurality of distributors (proxy server that returns to the user, a meta-file containing real content id and the surrogate server for each meta- content id, [0079], lines 24-29.

9. With respect to claim 8, Legout discloses a receiver for receiving the content ([0028], lines 26-30, receiver is interpreted as a client since a client can be an application or system that obtains results), the receiver comprising: a selector ([0004], lines 45-48, receiver is interpreted as a client) for selecting a distributor of the content out of a plurality of distributors ([0004], lines 45-48, 41-43); content-requesting means ([0004], lines 43-44, receiver is interpreted as a client) for requesting the content from the distributor selected ([0004], lines 43-44); receiving means for receiving the content ([0028], lines 26-30, a client receives content since it is an application or system that obtains results); identity-determining means for determining an identity associated with the content ([0068], lines 1-8; [0069], lines 9-26); and a verifier for verifying an availability of the content at the distributor based on the identity determined ([0027], lines 14-15; [0068], lines 1-8; [0069], lines 9-26), and wherein the receiver is arranged to only select the distributor if the verifier verified the availability of the content at the distributor (checking whether the closest surrogate server has the ability to serve the content requested by the user, [0011], lines 24-35; [0017]; [0018]).

10. With respect to claim 9, Legout discloses a method of distributing a content, (surrogate server adapted to deliver content requested by a user, [0011], lines 15-16), comprising the steps of: selecting, by a receiver ([0004], lines 45-48, receiver is interpreted as a client since a client is

an application or system that obtains results) distributor of the content out of a plurality of distributors ([0004], lines 45-48, 41-43), requesting, by the receiver ([0004], lines 43-44, receiver is interpreted as a client since a client is an application or system that obtains results), the content from the distributor selected ([0004], lines 43-44), dispatching the content to the receiver in response to receiving the request for the 'content from the receiver (device used by the user for connecting to the network, [0029], lines 38-46, when the device dispatches content, a method to operate the device for dispatching content is inherent), receiving the content at the receiver (device used by the user for connecting to the network, [0029], lines 38-46, when the device receives content, a method to operate the device for receiving content is inherent), determining an identity associated with the content (content will be mapped to the identity object, [0060] lines 16-18), and verifying an availability of the content at the distributor ([0011], lines 16-17, 24-35) based on the identity determined (comparing the identifier of the content requested by the user and the identifiers of the content contained in the closest surrogate server, [0017], lines 21-23, [0018]), and wherein, in the step of selecting, the distributor is only selected if the verifier verified the availability of the content at the distributor ([0011], lines 24-35; [0017], [0018]).

11. With respect to claim 10, Legout discloses a computer program product enabling a receiver that is part of a system for distributing a content (process for selecting a surrogate server in a content delivery network having at least two servers, [0011], line 13-15), to select a distributor of the content (out of a plurality of distributors process for selecting a surrogate server in a content delivery network having at least two servers, [0011], line 13-15), to request and receive the content from the distributor selected (device used by the user for connecting to the

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network, [0029], lines 38-46), to determine an identity associated with the content (content will be mapped to the identity object, [0060] lines 16-18),, to verify an availability of the content at the distributor based on the identity determined (comparing the identifier of the content requested by the user and the identifiers of the content contained in the closest surrogate server, [0017], lines 21-23, [0018]), and to only select the distributor after verifying the availability of the content at the distributor (checking whether the closest surrogate server has the ability to serve the content requested by the user, [0011], lines 24-35; [0017]; [0018]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Legout as applied to claims 1,2, and 4 above, in view of Kaufman et. al. (WO 0191417 A2), hereinafter Kaufman. Kaufman is cited in the Information Disclosure Statement filed by the applicant on 8/15/2006.

13. With respect to claim 5, Legout discloses limitations of a system distributing content, a receiver that comprises identity-receiving means, and wherein the system comprises a further distributor. However, Legout does not disclose a system wherein the receiver comprises quality-determining means for determining a quality of receiving the content of the distributor, and wherein the receiver is arranged to select the further distributor in dependence upon the quality determined.

Kaufman discloses the limitation wherein the receiver comprises quality- determining means for determining a quality of receiving the content of the distributor (client wrapper object determines the quality of the stream from the CDN, page 22, lines 9-12) and wherein the receiver is arranged to select the further distributor in dependence upon the quality determined (detects a problem with network quality, it initiates a CDN switch-over...to link to another CDN for the content, page 20, lines 11- 13; client sends a request to the new CDN server, page 22, lines 14-21).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Legout with the teachings of Kaufman to incorporate quality-determining means into a system for distributing content, in order to cause little or no disruption to the content being displayed (page 22, lines 3-4).

14. With respect to claim 7, Legout discloses wherein the receiver comprises identity-receiving means. However, Legout does not disclose wherein the system comprises a further distributor, wherein the further distributor comprises: verification request-receiving means and a verification result dispatcher for dispatching verification result. Kaufman discloses wherein the system comprises a further distributor (another CDN, page 20, lines 11-13), wherein the further distributor comprises: verification request-receiving means for receiving a verification request (client object monitor sends a switch-over request message to the monitoring manager, page 20, lines 16-18, when a switch-over request message is sent to monitoring manager, the means for receiving the message is inherent) for verifying availability at the further distributor of content associated with a further identity (selects a new CDN based on such factors as availability, page 21, lines 3-5), the further identity being part of the verification request (identity of the new CDN...is provided to the client in the form of a CDN switch-over message, page 21, lines 7-9); and a verification result dispatcher for dispatching a verification result (switch-over reply message, page 21, lines 12-13), wherein the further distributor is arranged to, in response to receiving the verification request from the receiver, the further distributor is arranged to verify availability at the further distributor of content associated with the further identity and to dispatch the verification result to the receiver (monitoring manager selects a new CDN based on such factors as availability, page 21, lines 3-5; switch-over reply message received by client, page 21, lines 12-13), and wherein the receiver is arranged to only select the further distributor after dispatching a verification request to the further distributor and receiving a verification result that verifies the availability of the content at the further distributor (monitoring manager selects a new CDN based on such factors as availability, page 21, lines 3-5, switch-over reply message

received by client, page 21, lines 12-13).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Legout with the teachings of Kaufman to incorporate a further distributor with verification means and a verification dispatcher with a system containing a receiver with identity receiving means, in order to cause little or no disruption to the content being displayed (page 22, lines 3-4).

Response to Arguments

15. Applicant's arguments, with regards to claims 1 and 2, filed 15 August 2006 have been fully considered but they are not persuasive.

16. On page 9 of the Applicant's response, applicant argues, that Legout does not teach, "the end-user's computer including the identity-determining means and a verifier."

The Examiner respectfully disagrees with Applicant's argument, since the office action also points out that Legout teaches the receiver as a client ([0028], lines 26-30) since a client is an application or system that obtains results. The receiver (i.e. client) may include identity-determining means since "the database holds for all surrogate servers the stored content identifiers" ([0069], lines 9-11) and a verifier since "a process verifies that the requested content is actually accessible" from a server ([0068], lines 1-8).

17. Applicant also argues on pages 9 and 10, that “the end-user’s computer of Legout does not provide any features even comparable to applicant’s claimed selector for selecting a distributor of the content out of a plurality of distributors; identity-determining means for determining an identity associated with the content; and a verifier for verifying an availability of the content at the distributor based on the identity determined.”

In response to the applicant’s argument, on pages 8 and 9, the Examiner respectfully disagrees with Applicant’s arguments, because the office action also points out that Legout teaches the receiver as a client ([0028], lines 26-30), since a client is an application or system that obtains results. A client may include the features of a selector ([0004], lines 45-48) for selecting a distributor of the content out of a plurality of distributors (0004], lines 45-48, 41-13) since there is a process for selecting a server in a network having at least two servers; identity-determining means for determining an identity associated with the content since “the database holds for all surrogate servers the stored content identifiers” ([0069], lines 9-11); and a verifier for verifying an availability of the content at the distributor based on the identity determined since “the process verifies that the requested content is actually accessible” from a server ([0068], lines 1-8).

18. On page 10 of the Applicant’s Response, applicant argues that Legout does not disclose “the receiver is arranged to only select the distributor if the verifier verified the availability of the content at the distributor.”

The Examiner respectfully disagrees with Applicant's arguments, because Legout discloses, "if the content is available, the process terminates (step 12) and returns the chosen surrogate server identifier" ([0068], lines 1-8); server identifier represents a distributor.

19. In the present application, Applicant also argues on page 109 that, Legout fails to teach or suggest "a receiver."

The Examiner respectfully disagrees with Applicant's arguments, because the receiver is interpreted as a client ([0028], lines 26-30), since a client is an application or system that obtains results.

20. Applicant also argues on page 10, that "the receiver is arranged to determine an identity by receiving the identity from one out of the plurality of distributors."

The Examiner respectfully disagrees with Applicant's argument, since Legout does teach a process that verifies content is accessible from the closest server, "if the content is available, the process terminates (step 12) and returns the chosen surrogate server identifier" ([0068], lines 1-8); server identifier represents a distributor. It is apparent that a plurality of servers is considered when determining the closest server. The office action also points out that Legout teaches the receiver as a client ([0028], lines 26-30) since a client is an application or system that obtains results, therefore, the receiver (i.e. client) may determine an identity by receiving an identity.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TREVILLIAN HIGHTER whose telephone number is (571)270-3806. The examiner can normally be reached on Monday-Friday 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571)272-3984. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.3/31

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

THH 5-8-2008

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/John Follansbee/

Supervisory Patent Examiner, Art Unit 2151